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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

77-5541

CHARLES EDWARD DOWNS, APPELLANT

v.

STATE OF OHIO, APPELLEE

APPEAL FROM THE SUPREME COURT OF OHIO

JURISDICTIONAL STATEMENT

John J. Charles
140 East Main Street
Lancaster, Ohio 43130

G. Gene Jackson
719 West Market Street
Baltimore, Ohio 43105

ATTORNEYS FOR APPELLANT

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1977

No.

CHARLES EDWARD DOWNS,

Appellant,

v.

STATE OF OHIO,

Appellee.

On Appeal From the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

THE OPINIONS BELOW

The Memorandum Decision of the Supreme Court of Ohio is reported at 51 Ohio St. 2d 47 (1977) and appears herein as Appendix A. The Judgment Entry of the Supreme Court of Ohio appears as Appendix B.

JURISDICTION

Appellant appeals from a judgment of the Supreme Court of Ohio, which affirmed appellant's conviction for three counts of aggravated murder and upheld the death sentence imposed on the appellant by the trial court.

Appellant contends that Sections 2929.03 and 2929.04 of the Ohio Revised Code, Ohio's statutory procedure for imposing the death penalty, is invalid because it is repugnant to the Fourteenth Amendment to the Constitution of the United States. The Ohio Supreme Court has upheld the validity of these statutes.

The judgment of the Supreme Court of Ohio sought to be reviewed was entered on July 13, 1977. The Notice of Appeal

was filed on October 3, 1977, in the Supreme Court of Ohio, the court possessed of the record. A copy of the Notice of Appeal appears herein as Appendix C.

Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1257 (2).

The validity of Sections 2929.03, imposing sentence for a capital offense, and 2929.04, criteria for imposing death or imprisonment for a capital offense, is here involved. These statutes are found in Page's Ohio Revised Code (1975) at pages 153 and 154. The full text of the two statutes appear herein as Appendixes D and E respectively.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Do Sections 2929.03 and 2929.04 of the Ohio Revised Code, requiring a defendant convicted of aggravated murder to prove certain mitigating circumstances by a preponderance of the evidence in order to be sentenced to life imprisonment, rather than to death, violate the due process requirement of the Fourteenth Amendment to the Constitution of the United States?

2. Must an indigent defendant be permitted to retain the services of a psychiatrist of his choosing at public expense, when the defendant has raised the issue of mental capacity as a mitigating circumstance pursuant to Ohio's statutory procedure for imposing the death penalty?

STATEMENT OF FACTS

Charles Edward Downs, the appellant herein, was tried for three (3) counts of aggravated murder. After the jury returned a verdict of guilty on all three (3) counts, the trial court had the appellant examined at the local mental health clinic and, after a mitigation hearing, sentenced the defendant to death.

The sentencing phase of the case was conducted pursuant to Ohio Revised Code Sections 2929.03 and 2929.04, which provide that the death penalty will be imposed unless the existence of specific mitigating circumstances are shown to

exist by a preponderance of the evidence.

Appellant contended that his offense was the product of psychosis or mental deficiency, one of the mitigating circumstances listed in Section 2929.04 of the Ohio Revised Code. After counsel for appellant had reviewed the complex reports by the psychiatrist and psychologists, who had examined appellant at the trial court's direction, appellant moved the court to authorize him to employ a psychiatrist of his own choosing at the expense of the State of Ohio and to furnish defendant with a transcript of the trial, also at State expense, for use by that psychiatrist, the defendant being indigent. Upon hearing, the defendant's motion was overruled by the Court. The texts of appellant's motion and the trial court's entry overruling the motion appear herein as Appendixes F and G.

At the sentencing hearing, Mr. Downs, pursuant to Section 2929.04 (B), was required to carry the burden of proof by a preponderance of the evidence on the issue of mitigation. The only testimony available to appellant to prove the existence of psychosis or mental deficiency was that of the psychologists and the psychiatrist appointed by the Court. There was conflict between the testimony of the psychiatrist and the psychologists. The psychologist testified that Mr. Downs, under stress, tended to be psychotic (TR 7 at 13), and that he could differentiate right from wrong only in the abstract sense. (Tr 7 at 38) The psychiatrist stated that he found no psychosis. (TR 7 at 58)

The Court of Appeals, Fifth Appellate District, affirmed the conviction and upheld the imposition the death penalty. Appellant then appealed to the Supreme Court of Ohio. In that appeal, appellant, as he had in the Court of Appeals specifically argued the two questions which are presented by this appeal. Appellant contended that Sections 2929.03 and 2929.04 of the Ohio Revised Code, Ohio's statutory procedure for imposing the death penalty, violated his right

of due process under the Fourteenth Amendment of the Constitution of the United States. The Supreme Court of Ohio found appellant's challenge to the constitutionality of Ohio's death penalty statutes to be without merit and affirmed the judgment of the lower courts. The Supreme Court of Ohio is the highest court in the State of Ohio.

The appellant is confined in the Southern Ohio Correctional Facility, Lucasville, Ohio. Execution of the death sentence has been stayed by the Supreme Court of Ohio pending this appeal.

SUBSTANTIAL FEDERAL QUESTION

The questions presented on this appeal must be passed upon by this Court, because they involve unresolved conflicts between Ohio's statutory procedure for imposing the death penalty and the due process rights of the appellant under the Fourteenth Amendment of the United States Constitution.

I.

This appeal raised the question whether Section 2929.03 and 2929.04 of the Ohio Revised Code, requiring a defendant convicted of aggravated murder to prove certain mitigating circumstances by a preponderance of the evidence in order to be sentenced to life imprisonment, rather than to death, violates the due process requirement of the Fourteenth Amendment to the United States Constitution. It is appellant's contention that the prosecution must prove beyond a reasonable doubt the absence of mitigating circumstances when the issue has been raised.

The Supreme Court of Ohio, in affirming the death sentence imposed on appellant, states in paragraph one of its syllabus, that Ohio's sentencing procedure for a capital offense is "not an adversary proceeding" because under the provisions of Ohio Revised Code Sections 2929.03 (D) and (E) and 2929.04 (B) "neither the defendant nor the prosecution is required by the statute to offer testimony or other evidence of mitigating circumstances."

The illogic of this proposition is obvious. Section 2929.04 specifically states that the death penalty is precluded when one of the mitigating circumstances is established by a preponderance of the evidence. If the defendant offers no evidence, no mitigating circumstances can possibly be established. So the defendant clearly not only has the burden of proving the existence of mitigating circumstances by a preponderance of the evidence, but also has the burden of going forward with the evidence. Once the defendant offers evidence, the prosecution will attempt to rebut that evidence. For the Supreme Court of Ohio to say that this does not create an adversary proceeding is ludicrous.

In paragraph five of its syllabus the Court does concede that the appellant did bear the "risk of nonpersuasion" during the mitigation hearing, but goes on to state that this sentencing procedure "does not impose an unconstitutional burden upon a defendant which would render the Ohio Statutory framework for the imposition of capital punishment unconstitutional."

The Supreme Court of Ohio goes on to say in paragraph six of its syllabus that the issue of mitigation is not "an additional and constitutionally mandated element of a capital offense, and the state is not constitutionally required to prove the lack of such mitigating factors beyond a reasonable doubt."

The Supreme Court of Ohio had stated in two earlier cases involving Ohio's aggravated murder statutes that the defendant had the burden of proof by a preponderance of the evidence to establish mitigating circumstances. The Court overruled those prior opinions, apparently believing that by calling the death penalty sentencing procedure a "nonadversary proceeding" and by calling the burden of proof the "risk of nonpersuasion" the due process requirements of the Fourteenth Amendment of the Constitution of the United States and the impact of Mullaney vs. Wilbur (1975) 421 U. S. 684, could be avoided by the Ohio courts in imposing the death penalty.

The Supreme Court of Ohio in its opinion in this case

does, in fact, recognize the impact of Mullaney on Ohio's procedure for imposing the death penalty, to wit:

It can be argued that the rationale of Mullaney is applicable to Ohio's death sentencing procedure. The mitigating factors listed in R. C. 2929.04 (B) are relevant in determining the degree of punishment attached to the commission of the offense. As was true with the issue of provocation in Mullaney, these factors do not constitute elements of the crime. As was the case in both Winship and Mullaney, the defendant in the case at hand has at stake interest of immense importance.

It is true that the state would be required to bear an additional burden in a capital case. But neither that fact, nor the fact that the evidence may be peculiarly within the knowledge of the defendant is of any consequence. Of Mullaney, at page 702. State vs. Downs (1977), 51 Ohio St. 47 at 57.

The Court then proceeds to distinguish the issue of provocation in homicide in Mullaney from mitigation in death sentences by aluding to historical dissimilarities between the two issues. This approach, however, ignores the general thrust of Mullaney and does not recognize the significant role of the mitigation hearing in the Ohio procedure for imposing the death penalty.

In Mullaney this Court unanimously struck down a Maine statute which required a defendant charged with murder to prove by a preponderance of the evidence that he acted in the heat of passion on sudden provocation in order to reduce murder to manslaughter and to receive a lesser penalty. The Court said that its holding in In Re Winship, 397, U. S. 358 (1970), that the prosecution must prove beyond a reasonable doubt every fact necessary to prosecute the crime charged, was not satisfied by the Maine statute. The Court in rendering its decision in Mullaney stated:

....The criminal law of Maine, like that of other jurisdictions, is concerned not only with guilt or innocence in the abstract but also with the degree of criminal culpability. Maine has chosen to distinguish those who kill in the heat of passion from those who kill in the absence of this factor. Because the former are less "blameworthy," State v. Lafferty, 309 A2d, at 671, 673 (concurring opinion), they are subject to substantially less severe penalties. By drawing this distinction, while refusing to require the prosecution to establish beyond a reasonable doubt the fact upon which it turns, Maine denigrates the interests found critical in Winship.

The safeguards of due process are not rendered unavailing simply because a determination may already have been reached that would stigmatize the defendant and that might lead to a significant impairment of personal liberty. The fact remains that the consequences resulting from a verdict of murder, as compared with a verdict of manslaughter, differ significantly. Indeed, when viewed in terms of the potential difference in restrictions of personal liberty attendant to each conviction, the distinction established by Maine between murder and manslaughter may be of greater importance than the difference between guilt or innocence for many lesser crimes.

This Court in Mullaney rejected the argument that In Re Winship did not apply because the absence of provocation was not an element of the crime, but only relative to the determination of punishment. The Court said:

Moreover, if Winship were limited to those facts that constitute a crime as defined by state law, a State could undetermine many of the interests that decision sought to protect without effecting any substantive change in its law. It would only be necessary to redefine the elements that constitute different crimes. Characterizing them as factors that bear solely on the extent of punishment.

Section 2929.04 (B) of the Ohio Revised Code is identical in general concept to the Maine statute struck down in Mullaney. The Ohio statute states:

(B) Regardless of whether one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment and proved beyond a reasonable doubt, the death penalty for aggravated murder is precluded when, considering the nature and circumstances of the offense and the history, character, and condition of the offender, one or more of the following is established by a preponderance [preponderance] of the evidence:

- (1) The victim of the offense induced or facilitated it.
- (2) It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.
- (3) The offense was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity.

The Ohio statute creates the distinction between the crime of aggravated murder requiring imposition of the death penalty and the crime of aggravated murder in which the death penalty is precluded. The distinction created different offenses, not different degrees of a single offense. The distinction is extremely significant because it involves life or death.

One of the mitigating circumstance which the offender under the Ohio statute must prove by a preponderance of the evidence is provocation. Section 2929.04 (B) (2). It was the requirement in Maine statute that the offender prove provocation that caused the Maine law to be declared unconstitutional in Mullaney.

The Maine law and Ohio law are quite similar. The Ohio law, like the Maine law, is unconstitutional, because it requires the defendant to prove mitigating circumstances by a preponderance of the evidence to preclude imposition of the death penalty. In doing so, it violates the due process requirements of the Fourteenth Amendment of the United States Constitution and is contrary to the holdings of this Court in Mullaney and In Re Winship.

The Ohio court's view that the rulings and reasoning of In Re Winship, supra, and Mullaney vs. Wilbur, supra, do not extend to the mitigation hearing denies appellant fundamental due process, because the sentencing phase is an integral part of the determination of the nature of the crime, and ultimately, whether or not the Court will impose the death penalty. To circumvent due process requirements by the procedural ploy of saying that such requirements do not apply to one half of a bifurcated trial is clearly contrary to the spirit and reasoning of In Re Winship, supra, and Mullaney vs. Wilbur, supra. The determination of the absence or presence of mitigating circumstances is an element of the crime itself and not solely a matter of sentencing. The argument that the showing of mitigating circumstances is solely a factor relevant to sentencing and to punishment, was rejected in Mullaney vs. Wilbur, supra.

II.

The second question is whether an indigent defendant must be permitted to retain the services of a psychiatrist of his choosing at public expense, when the defendant has raised the issue of mental capacity as a mitigating circumstance pursuant to Ohio's statutory procedure for imposing the death

penalty.

The appellant, Charles Edward Downs, was not only required to prove the existence of mitigating circumstances to preclude imposition of the death penalty, but he was not permitted, despite his indigency, to obtain the services of a psychiatrist of his choosing at public expense to assist him and his counsel at the mitigation hearing.

After the appellant's conviction for aggravated murder, the Court ordered that Mr. Downs be examined by the local mental health clinic. The reports furnished to the court by the psychiatrist and the psychologists at the clinic were of such complexity and so contradicted one another that appellant requested an independent examination by a psychiatrist of appellant's choosing at the expense of the State of Ohio. That request was overruled.

The importance of an independent evaluation was underscored at the mitigation hearing. Two (2) psychologists and the psychiatrist all acknowledged that they relied entirely on interviews with the defendant for their evaluation. They did not talk to Mr. Down's friends, family or employers or to witnesses who had testified about Mr. Downs at the trial. They did not read the transcript of the trial, nor did they look into Mr. Down's background.

At the mitigation hearing, there was a conflict between the testimony of the psychologists and that of the psychiatrist. The psychologists testified that Mr. Downs, under stress, tended toward the psychotic and that he could differentiate right from wrong only in a very abstract sense. The psychiatrist stated that he found no psychosis. The trial court then ruled that the appellant had failed to establish the existence of psychosis.

The appellant had been required to prove the existence of psychosis or mental deficiency, but the only experts made available to him were those selected by the Court and directed by the Court in their evaluation of the defendant. A defendant

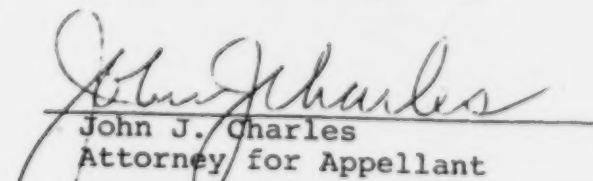
with financial resources would unquestionable have obtained the assistance of a psychiatric expert of his choosing. Had this appellant chosen to raise the defense of insanity at the trial, the court would have permitted him to employ a psychiatrist of his choosing at public expense. The court apparently draws a distinction between the question of guilt and innocence and the question of life or death. To the appellant, and to a society which places a high regard on a human life, the latter may well be the more important determination.

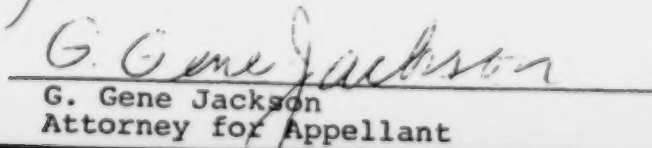
Giedon vs. Wainwright, 372 U. S. 335 (1967) began a fastmoving trend in the criminal justice system of the United States to put the indigent defendant on an equal footing with a defendant who can pay for his defense. There can be no doubt that a defendant with financial resources would employ experts to assist him and his counsel in a mitigation hearing. Mr. Downs, because he was indigent, has been denied that opportunity at the most crucial stage of the proceedings, the determination of whether he lives or dies. The trial court's refusal to appoint a psychiatrist to assist appellant and his counsel denied appellant his fundamental right of due process.

CONCLUSION

This appeal raises issues of extreme significance to the criminal justice system. This court has upheld the right of the States to impose the death penalty, but only under circumstances which guarantee that all the due process rights of the individual defendant are protected completely. Ohio's statutory scheme for imposing the death penalty impugns those fundamental rights of due process. This Court has not decided the issues raised by this appeal and should consider them at this time.

Respectfully, submitted,


John J. Charles
Attorney for Appellant


G. Gene Jackson
Attorney for Appellant

APPENDIX A, is the Opinion of the Court in State v. Downs, (1977), 51 Ohio St.2d 47., and has not been reproduced here.

APPENDIX B

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, }
City of Columbus. }

19⁷⁷ TERM

To wit: July 13, 1977

The State of Ohio,
Appellee,

vs.

Charles Edward Downs,
Appellant.

No. 77-75

APPEAL FROM THE COURT OF
APPEALS

for FAIRFIELD County

This cause, here on appeal from the Court of Appeals for FAIRFIELD County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is affirmed for the reasons set forth in the opinion rendered herein and it appearing to the Court that the date heretofore fixed for the execution of the judgment and sentence of the Court of Common Pleas is now past, this Court proceeding as required by law does hereby fix the 12th day of September, 1977 as the date for carrying said sentence into execution by the Superintendent of the Southern Ohio Correctional Facility, or in his absence by the Assistant Superintendent, in accordance with the statutes in such case made and provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this Court be duly certified to the Superintendent of the Southern Ohio Correctional Facility and the Superintendent make due return thereof to the Clerk of the Court of Common Pleas of Fairfield County,

and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the COMMON PLEAS COURT to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for FAIRFIELD County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this day of 19

Clerk

Deputy

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF OHIO

CHARLES EDWARD DOWNS,

Appellant,

v.

STATE OF OHIO.

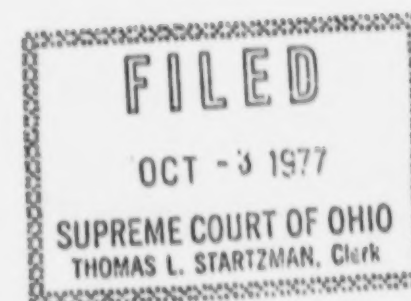
No. 77-75

NOTICE OF APPEAL TO THE SUPREME COURT OF
THE UNITED STATES

Notice is hereby given that Charles Edward Downs, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Ohio affirming the judgment of conviction, entered herein on July 13, 1977.

This appeal is taken pursuant to 28 U.S.C.

§1257(2).



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G. Gene Jackson
JACKSON & KELLER
719 West Market Street
Baltimore, Ohio 43105

ATTORNEYS FOR APPELLANT

PROOF OF SERVICE

A copy of the foregoing Notice of Appeal to the Supreme Court of the United States was served on James W. Luse, Prosecuting Attorney of Fairfield County, Ohio, by personally delivering a copy to his office in the Equitable Building, Lancaster, Ohio 43130, this 3rd day of October, 1977.

John J. Charles

G. Gene Jackson

Attorneys for Appellant

APPENDIX D

§ 2929.03 Imposing sentence for a capital offense.

(A) If the indictment or count in the indictment charging aggravated murder contains no specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge, the trial court shall impose sentence of life imprisonment on the offender.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard, which shall include an instruction that a specification must be proved beyond a reasonable doubt in order to support a guilty verdict on such specification, but such instruction shall not mention the penalty which may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, the trial court shall impose sentence of life imprisonment on the offender. If the indictment contains one or more specifications listed in division (A) of such section, then, following a verdict of guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be determined:

(1) By the panel of three judges which tried the offender upon his waiver of the right to trial by jury;

(2) By the trial judge, if the offender was tried by jury.

(D) When death may be imposed as a penalty for aggravated murder, the court shall require a pre-sentence investigation and a psychiatric examination to be made, and reports submitted to the court, pursuant to section 2947.06 of the Revised Code. Copies of the reports shall be furnished to the prosecutor and to the offender or his counsel. The court shall hear testimony and other evidence, the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, relevant to the penalty which should be imposed on the offender. If the offender chooses to make a statement, he is subject to cross-

examination only if he consents to make such statement under oath or affirmation.

(E) Upon consideration of the reports, testimony, other evidence, statement of the offender, and arguments of counsel submitted to the court pursuant to division (D) of this section, if the court finds, or if the panel of three judges unanimously finds that none of the mitigating circumstances listed in division (B) of section 2929.04 of the Revised Code is established by a preponderance of the evidence, it shall impose sentence of death on the offender. Otherwise, it shall impose sentence of life imprisonment on the offender.

HISTORY: 134 v. H 511. EN 1-1-74.

BEST COPY AVAILABLE

APPENDIX E

§ 2929.04 Criteria for imposing death or imprisonment for a capital offense.

(B) Regardless of whether one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment and proved beyond a reasonable doubt, the death penalty for aggravated murder is precluded when, considering the nature and circumstances of the offense and the history, character, and condition of the offender, one or more of the following is established by a preponderance [preponderance] of the evidence:

(1) The victim of the offense induced or facilitated it.

(2) It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.

(3) The offense was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity.

HISTORY: 134 v. H.S. 11. EN 1-1-74.

APPENDIX F

IN THE COURT OF COMMON PLEAS OF FAIRFIELD COUNTY, OHIO

State of Ohio,

FILED

Plaintiff, JAN 2 10 57 AM '76

Case No. 7306

-VS-

Charles Edward Downs,

ROBERT W. LACEY
CLERK OF COURTS
FAIRFIELD CO. OHIO

NOTION

Defendant.

The defendant, by his counsel, represents to the Court that the Psychiatric report of Dr. Harold T. Brown, furnished herein, is of such complexity and the issue to be resolved thereby is of such great consequence to the defendant, that the defendant cannot intelligently proceed with mitigation hearing prior to sentence as required by Section 2929.03 Ohio Revised Code, without additional psychiatric evaluation and information which are unavailable to defendant by reason of his indigency.

Defendant therefore respectfully moves the Court as follows:

Branch I. That defendant be authorized to employ a psychiatrist of his own choosing and at the expense of the State of Ohio, to make an independent psychiatric examination and evaluation of defendant upon such terms as the Court may require in order that the information therefrom be available to defendant and to the Court prior to the hearing herein scheduled for 8:30 A.M. on January 22, 1976.

Branch II. That defendant be furnished a transcript of the testimony adduced against him at the trial of this case in order that he, his counsel, and a psychiatrist of his choosing may evaluate it as it might have bearing upon the issue of mitigation and the penalty to be imposed herein; that such transcript be furnished defendant sufficiently prior to such hearing as to permit use and analysis thereof in preparation for such hearing.

Branch III. That the Court vacate and set aside the hearing date set for herein for 8:30 A.M. on January 22, 1976 to give counsel to prepare for such hearing by obtaining the transcript and psychiatric report heretofore requested.

Respectfully submitted,

John J. Charles
DANGER, JOHNSTON & COLEMAN
Attorney for Defendant

G. Gene Jackson
JACKSON & KELLER
Attorney for Defendant

PROOF OF SERVICE

A copy of the foregoing Motion was mailed by regular U. S. Mail to James Luse, Assistant Prosecuting Attorney, Equitable Building, Lancaster, Ohio, 43130, this ____ day of January, 1976.

G. Gene Jackson
JACKSON & KELLER
Attorney for Defendant

APPENDIX G

IN THE COURT OF COMMON PLEAS, FAIRFIELD COUNTY, OHIO

The State of Ohio,

vs.

CASE NO. 7605

Charles Edward Downs,

ENTRY

Defendant

On this 9th day of January, 1976, appeared James W. Luse, Prosecuting Attorney of Fairfield County, Ohio, on behalf of the State of Ohio; also appeared the Defendant, Charles Edward Downs, with his counsel, G. Gene Jackson and John J. Charles.

The Defendant, having filed a motion with the Court to authorize the Defendant to employ a psychiatrist of his own choice and to provide him with a transcript of the trial and to vacate and set aside the hearing for mitigation set for 8:30 a.m. on January 22, 1976. The Court, after hearing oral arguments of counsel finds each of the three branches of the Defendant's motion to be not well taken and the same are hereby overruled.

MERLIN C. PARENT--JUDGE

APPROVED BY:

James W. Luse
Prosecuting Attorney

G. Gene Jackson
Counsel for Defendant

John J. Charles
Counsel for Defendant

77-5541

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IN THE SUPREME COURT OF THE STATE OF OHIO

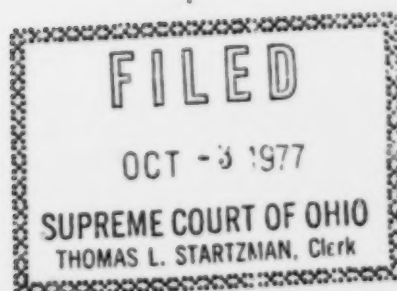
CHARLES EDWARD DOWNS,)
Appellant,)
v.)
STATE OF OHIO.)

No. 77-75

NOTICE OF APPEAL TO THE SUPREME COURT OF
THE UNITED STATES

Notice is hereby given that Charles Edward Downs,
the appellant above named, hereby appeals to the Supreme
Court of the United States from the final order of the
Supreme Court of the State of Ohio affirming the judgment
of conviction, entered herein on July 13, 1977.

This appeal is taken pursuant to 28 U.S.C.
§1257(2).



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PROOF OF SERVICE

A copy of the foregoing Notice of Appeal to the
Supreme Court of the United States was served on James W.
Luse, Prosecuting Attorney of Fairfield County, Ohio, by
personally delivering a copy to his office in the Equitable
Building, Lancaster, Ohio 43130, this 3rd day of October,
1977.

John J. Charles

G. Gene Jackson

Attorneys for Appellant